

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : Criminal No. 04-9E
LEONARD SHOUGH :
:

Sentencing Hearing in the above-captioned

matter held on Tuesday, December 6, 2005
commencing at 9:00 a.m., before the Honorable
Maurice B. Cohill, at the United States Courthouse,
Courtroom A, 617 State Street, Erie, Pennsylvania
16501.

For the United States of America:

Christian A. Trabold, Esquire
Office of the United States Attorney

For the Defendant:

Thomas Patton, Esquire
Office of the Federal Public Defender

Reported by Janis L. Ferguson, RPR

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1 THE COURT: This is the case of United States of
2 America against Leonard Shough.

3 We sentenced Mr. Shough last January, and the
4 Third Circuit Court of Appeals sent the case back. They
5 didn't give us much guidance, but the total opinion of the
6 Circuit says this: "Appellant challenges his sentence under
7 United States versus Booker, 543 U.S. Supreme Court 738,
8 2005. The sentence having been based in part upon findings
9 made by the District Court as to the amount of loss in
10 Shough's conduct in assuming another's identity. Having
11 determined that the sentencing issues Appellant raises are
12 best determined by the District Court of the first instance,
13 we will vacate the sentence and remand for a resentencing in
14 accordance with Booker."

15 So they don't give us much guidance here, but
16 I have received a position paper from Mr. Patton, and I'd
17 like you to expound on that, if you would.

18 MR. TRABOLD: Yes, Your Honor. First I'd like to
19 ensure that we put on the record that I basically -- I want
20 to raise all the objections that I raised at the first
21 sentencing hearing. The legal objections I made to --
22 including the amount of the mortgages that were at issue in
23 the case, et al., in the loss.

24 THE COURT: It's a little complicated, because we
25 use the -- I'll call it, for lack of a better word, the face

1 amount of the mortgages as the Guideline point of reference.
2 In other words, they came out to, I think, 146,000-some
3 dollars. And that was the Guideline we looked at. Which
4 made it a Guideline offense level of 17. And then
5 Mr. Patton was arguing that it should not be the face amount
6 of those mortgages, but should be the actual amount
7 involved, which raised it to -- which raised it to \$129,714.

8 Quoting from Mr. Patton -- I don't want to
9 make your argument for you here. I want to make it clear on
10 the record that I do understand what we're talking about.
11 Mr. Patton says if the loss for the mortgages is 62-4 rather
12 than 146-5, the total loss is \$129,714.85. A loss of
13 \$129,714.85 results in an addition of 10 levels to the base
14 offense level, rather than the addition of 12 levels that's
15 called for by a loss figure of \$213,818.85. So he argues
16 there that the total offense level should be 15, rather than
17 17.

18 MR. PATTON: That's correct, Your Honor. I do,
19 though, want to state that like I did in our new position
20 with respect to sentencing factors, I still am objecting to
21 the mortgages being included at all in the amount of the
22 loss, based on the legal arguments we made in the initial
23 hearing. But I don't see any need to go over all those
24 arguments again, because Your Honor ruled on them, and ruled
25 that you were going to include the mortgages, at least to a

1 certain extent, to the extent that Mr. Shough taking out the
2 mortgages reduced the amount of credit Mr. Green could
3 receive.

4 We still are objecting to that, you know,
5 making the same arguments that we made at the initial
6 hearing. But if you are going to use the mortgages,
7 including them in the amount of the loss, then you have just
8 now read in, you know, the argument that we are making and
9 stating it accurately, you know, basically in that there was
10 never any point in time when Mr. Shough had \$146,500 worth
11 of mortgages taken out. They were a series of mortgages,
12 each one used to pay off the prior one, so that the largest
13 amount of any mortgage that was out at any one time was the
14 62,400.

15 THE COURT: Right.

16 MR. PATTON: And so, you know, that is our
17 argument. To the extent that you are going to use the
18 mortgages at all, it should only be the 62,400.

19 THE COURT: Thanks. Mr. Trabold?

20 MR. TRABOLD: Judge, we have a couple of issues.
21 First of all, this case, despite the Third Circuit returning
22 it, the Government has a strong objection to you even
23 entertaining any additional sentencing arguments, because
24 this case was decided -- you sentenced Mr. Shough, and after
25 the Booker decision came down and specifically stated on the

1 record, if my recollection is correct, which I think it is,
2 that you were acknowledging that the Guideline was only
3 advisory, and that you were not constrained by the
4 Guideline. So --

5 THE COURT: Yeah, I read -- I read part of the
6 transcript of the sentencing hearing this morning, and I
7 agree, I did say that.

8 MR. TRABOLD: Well, and the difficulty the
9 Government has with that is the Third Circuit -- the case is
10 simply here today based on nothing more than a pure mistake
11 on the Third Circuit's part.

12 THE COURT: I haven't overruled them in a long
13 time.

14 MR. TRABOLD: Mr. Shough isn't entitled to a
15 second bite of the apple when the Third Circuit on the
16 record has clearly made a mistake. To reduce his sentence
17 now, when really we shouldn't be here in front of you today,
18 the Government asserts is plainly not appropriate.

19 Our position remains that the entire amount
20 of the mortgages should still be considered as it was
21 considered by you before, and that that's an appropriate
22 calculation, and that the calculations you made before, the
23 way you made it, is correct. And even beyond that, if the
24 Court was to find the argument as it relates to the amount
25 of loss today made by counsel persuasive, you're not bound

1 by the guidelines anyway and are still free to sentence
2 Mr. Shough to whatever it is that you want. And having said
3 that, coupled with the fact that, really, Mr. Shough
4 shouldn't be here today in front of you in the first place,
5 it's our position that you should keep his sentence at what
6 it was before, for all of the reasons stated previously by
7 the Government. Thank you.

8 THE COURT: Okay, thanks.

9 MR. PATTON: Judge, I don't -- I just want to
10 respond. I understand what the Government's position is; is
11 that the Third Circuit has made an error sending it back.
12 But the fact of the matter is they vacated the sentence and
13 sent it back for a resentencing de novo, and I'm entitled to
14 make whatever argument, legal argument I can regarding the
15 sentence, and you are not limited in any way to considering
16 arguments presented today.

17 THE COURT: Well, I think it's -- Booker really
18 talks about the District Courts making findings of fact
19 beyond a reasonable doubt where the facts are not covered in
20 a guilty plea or in a jury verdict. But -- and I think
21 this, really, is a -- more a question of law than of fact.
22 But as Mr. Trabold points out, the Guidelines are simply
23 advisory, and we take a look at them and then use our best
24 judgment at arriving at conclusions under those -- under
25 those Guidelines.

1 I think the mortgage question, though, does
2 make -- the question raised by Mr. Patton does make some
3 sense. Or the issue, I guess I should say, raised by
4 Mr. Patton makes some sense. And I'm going to decree now
5 that the loss for the mortgages should be \$62,400, rather
6 than \$146,500. So the total loss becomes \$129,714.85, and
7 that's arrived at by adding the Social Security, the Erie
8 Consumer Discount, the U.S. Department of Education, and the
9 mortgage loan, which comes out to a total of \$129,714.85.

10 So this results in an addition of 10 levels
11 to the base offense level set out in Sentencing Guideline
12 2B1.1, rather than the addition of 12 levels called for by
13 the old figure that we used of \$213,818.85. So that would
14 make this a total offense level of 15, as opposed to 17,
15 which we found in the previous hearing, and an offense level
16 of 15. And I'm going to -- I'm still going to add the five,
17 which I did before, the upward departure of five levels,
18 because I think this was a -- just -- and I -- it's one of
19 the worst fraud cases I have ever heard; maybe the worse.
20 From all I gather, and from the testimony of Agent DeSantis
21 at the sentencing hearing, this man's -- Mr. -- the real Mr.
22 Green's life is absolutely ruined, and the ripple effect on
23 his family was terrible. They didn't know until Mr.
24 Green's -- the woman that married Mr. Shough, thinking his
25 name was Green, until she died, nobody knew about this

1 fraud. It was just a terrible situation from the beginning.

2 So I have -- I have little sympathy for
3 Mr. Shough, and I feel that justice does require us to
4 reduce the level to 15, rather than the 17 we previously
5 found.

6 But anyway, that makes an offense level of 15
7 and a point of departure for an upward departure, which I'm
8 still adding the five, which makes it an offense level of
9 20. Under the Guidelines this would call for a range of
10 minimum of 63, maximum 78 months, and a fine in the range of
11 7,500 to \$75,000.

12 Did you have anything further, Mr. Patton?

13 MR. PATTON: Your Honor, I would just argue for
14 when you're deciding where within the range of 63 to 78
15 months -- again, we objected to the upward departure
16 originally. We would continue to object with the same
17 arguments that we made at the original sentencing. But I
18 understand that -- your ruling today, that you are going to
19 continue to do that.

20 Before, when you sentenced Mr. Shough, you
21 were working with a range of 77 to 96 months, and you
22 imposed a sentence of 84 months. And so you're now working
23 with a range of 63 to 78 months. So I'd just ask that you
24 give a sentence that is in the middle to the lower end of
25 that range, which would be consistent with what you did the

1 first time you sentenced Mr. Shough.

2 THE COURT: Thanks. Mr. Trabold?

3 MR. TRABOLD: Well, Your Honor, based on the fact
4 that you just said that this is quite possibly the worst
5 fraud that you have ever seen, not only should your sentence
6 be at the high end of the range, it remains the Government's
7 position that since the range is only advisory, you should
8 maintain the same sentence on Mr. Shough that you imposed
9 before.

10 THE COURT: Well, I'm going to lower it a little
11 bit, but I'm going to go to the top -- I'm going to go to
12 the top of the level 20 range, and we're now resentencing
13 Mr. Shough to a term of confinement of 78 months. That's a
14 reduction of six months from the previous sentence. All
15 other -- all other findings with respect to the sentence
16 imposed last January shall remain in full force and effect.

17 MR. PATTON: Your Honor, I don't believe
18 Mr. Shough wants to make a statement to Your Honor, but I
19 believe it's important that give him the opportunity.

20 THE COURT: If you wish to make a statement,
21 Mr. Shough, you may.

22 MR. SHOUGH: I don't want to say nothing at this
23 time. I don't want to make a statement.

24 THE COURT: I think that's everything.

25 MR. PATTON: The appeal rights, Your Honor.

1 THE COURT: Sure. You have a right to appeal,
2 Mr. Shough. An appeal should be filed within 10 days. If
3 you can't afford a lower, one will be appointed for you.

4 MR. PATTON: Thank you, Your Honor.

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6 (Hearing concluded at 9:28 a.m.)

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